HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.3848 of 2004
Date of decision : 30.01.2007

Som Raj and another **.....Appellants**

versus

Paramjit Singh and others **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Arun Palli, Advocate for the appellants.
Mr.Arun Bansal, Advocate for respondent No.1.

* * *

ORDER

HEMANT GUPTA, J. (Oral)

The defendants are in second appeal aggrieved against the judgment and decree passed by the learned First Appellate Court, whereby suit for permanent injunction in respect of the land measuring 6 kanals-8 marlas of the land, was decreed.

It has been found by the learned First Appellate Court that there is no specific denial in respect of exclusive possession of the plaintiff over the suit land. It has also been found that the plaintiff while appearing as PW-1 has asserted that he is in exclusive possession of the land.

Learned counsel for the appellants has vehemently argued that in the revenue record, such as jamabandi for the years 1995-96, Exhibit P-1, Surakshit Singh, vendor of the appellant and Paramjit Singh-plaintiff is recorded in joint possession of the suit land and, therefore, the finding recorded by the learned First Appellate Court that Paramjit Singh is in exclusive possession of the suit land measuring 6 kanals 8 marlas cannot be sustained. Reference has been made to subsequent jamabandi

Exhibit P-2 for the year 1999, wherein the appellants, purchasers from Surakshit Singh, have been reflected in joint possession of the suit land.

However, I do not find any merit in the argument raised by learned counsel for the appellants. No doubt, the entries in the jamabandi carry presumption of correctness, but such presumption can be rebutted. It is the categorical case of the plaintiff in the plaint itself that the land measuring 6 kanals 8 marlas is jointly owned with Surakshit Singh. In para No.2 of the plaint, it has been stated that though in the revenue record, plaintiff and his brother Surkashit Singh is shown in joint possession, but the plaintiff is in actual possession of the suit property. In the written statement, the defendant has relied upon the sale by Surakshit Singh out of his share, to the defendants. The defendants have not asserted their exclusive possession over any part of the suit property. For facility of reference, para Nos.1 & 2 of the plaint and that of the written statement are reproduced as below:

Plaint

"1. That land measuring 6K-8M fully described and detailed in the head note of the plaint, situated at Village Nansota, Tehsil Mukerian, is recorded the joint ownership of plaintiff with his brother Surakshat Singh.

2. That the plaintiff is in actual physical possession of the suit land in which he has installed T-well, has sown rice crop. But, in the revenue record, he is shown in joint possession with his brother Surakshat Singh, who is residing at Chandigarh."

Written Statement

"1. That in reply to para No.1 of the plaint, it is submitted that suit land is joint between plaintiff and his brother Surakshat Singh and Surakshat Singh, one of the co-

sharer, has validly sold land out of his share to the answering defendants vide sale deed dated 26.3.98, 26.3.98 and 30.3.98 and mutation Nos.112, 113 and 114 has also been sanctioned in favour of the answering defendants. Thus, all the answering defendants has stepped into the shoes of Surakhshat Singh on of the co-sharer and all answering defendants have become co-sharer in the suit land.

2. That para No.2 of the plaint is wrong and baseless, hence denied."

A perusal of the above pleadings would leave no manner of doubt that it was the case of the plaintiff in the plaint itself that presumption in respect of the revenue record is incorrect that it is the plaintiff who is in exclusive possession of the suit property. There is no denial to such assertion of the plaintiff. The plaintiff in his evidence has also deposed that he is in exclusive possession of the land measuring 6 kanals 8 marlas. The learned First Appellate Court has believed the evidence of the plaintiff to hold that the plaintiff is in possession. Therefore, the presumption sought to be raised by the appellant on the basis of revenue record has been rightly found to be rebutted.

In view of the above, I do not find any illegality or irregularity in the findings recorded by the learned First Appellate Court, which may give rise to any substantial question of law in second appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

January 30, 2007
**mohinder*